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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,787	03/26/2004	Alan C. Wendt	920095-95446	9635
<div>7590      04/25/2007 Anthony P Venturino Stevens Davis Miller &amp; Mosher LLP 1615 L St NW Suite 850 Washington, DC 20036</div>			<div>EXAMINER PHILLIPS, FORREST M</div>	
			ART UNIT 2837	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/25/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/810,787

**Applicant(s)**

WENDT ET AL.

**Examiner**

Forrest M. Phillips

**Art Unit**

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-46 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

Claim 43 is objected to because of the following informalities: "of a material from the group consisting of metal" has been treated as reading, like claim 44 "of metal". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2,7,9-10,14,17-18,22,25-26,31,34-38, rejected under 35 U.S.C. 102(b) as being anticipated by Baruch (US3253675).

With respect to claim 1 Baruch discloses a durable sound absorbing panel having surface burning <sup>resistance</sup> qualities for use in a structure having an environmental area, the panel comprising:

A panel substrate (15 in figure 3) having a first face (downward facing) and a second face (upward facing), the second face opposing the first face and substantially concealed from the environmental area when installed;

The panel substrate supported from a structure (see figure 5), the panel substrate including a plurality of apertures (17 in figures 3 and 5) spread across the surface of the panel substrate to extend from the first face to the second face;

A nonwoven fibrous material (19 in figure 3) attached to the first face of the panel substrate and applied such that the apertures are covered by the non-woven fibrous material;

The non-woven fibrous material is positioned such that nearly complete exposure of the material occurs when installed (see figure 5 for installation ), permitting viewing from the environmental area of the structure (see also column 5 lines 15-20 description of element 19).

With respect to claim 2 Baruch further discloses wherein the nonwoven fibrous material is attached to the first face of the panel substrate with an adhesive (column 4lines 30-35).

With respect to claim 7 Baruch further discloses wherein the panel includes at least two side edges each having a flange for connection to a suspended ceiling grid, wherein the suspended ceiling grid includes a plurality of grid members interconnected to form panel openings, the grid members suspended from the structure with hangers (see figure 5, Column 4 lines 45-65).

With respect to claim 9 Baruch discloses an interior finishing panel for use in a building structure comprising:

A semi-rigid panel substrate (15 in figure 3) supported by its edges (see installation of figure 5) with minimal panel substrate flex, the panel substrate having a

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first face and a second face opposing the first face, the second face being substantially concealed when the finishing panel is installed within the building structure; a first set of apertures (17 in figure 3) in the panel substrate having a first size;

A non-woven fibrous material (19 in figure 3) attached to the first face of the panel substrate covering the first set of apertures, the fibrous material being substantially visible when installed in the building structure (see installation of figure 5).

With respect to claim 10 Baruch further discloses wherein the nonwoven fibrous material is attached to the first face of the panel substrate with an adhesive (column 4lines 30-35).

With respect to claim 14 Baruch further discloses wherein the panel includes at least two side edges each having a flange for connection to a suspended ceiling grid, wherein the suspended ceiling grid includes a plurality of grid members interconnected to form panel openings, the grid members suspended from the structure with hangers (see figure 5, Column 4 lines 45-65).

With respect to claim 17 Baruch discloses an interior finishing panel for use in a building structure comprising:

A semi-rigid panel substrate (15 in figure 3) having an exterior face and an interior face, opposing the exterior face, the interior face substantially concealed when the panel is installed (figure 5) in the building structure,

A plurality of apertures (17 in figure 3) having a first size passing through the panel substrate and extending across the faces; a non-woven fibrous material permanently adhered to the exterior face of the panel substrate (19 in figure 3), and

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positioned to cover the apertures, the fibrous material substantially visible when the panel is installed in the building structure (see figure 5).

With respect to claim 18 Baruch further discloses wherein the nonwoven fibrous material is attached to the exterior face of the panel substrate with an adhesive (column 4 lines 30-35).

With respect to claim 22 Baruch further discloses wherein the panel includes at least two side edges each having a flange for connection to a suspended ceiling grid, wherein the suspended ceiling grid includes a plurality of grid members interconnected to form panel openings, the grid members suspended from the structure with hangers (see figure 5, Column 4 lines 45-65).

With respect to claim 25 Baruch discloses a durable sound absorbing ceiling system having fire resistive qualities for use in a structure having an environmental area the system comprising:

A plurality of grid members interconnected to form a grid, the grid members being suspended from the structure (see figure 5);

A panel substrate (15 in figure 3) having a first face and a second face, the second face opposing the first face and substantially concealed from the environmental area when installed; the panel substrate supported from the grid, the panel substrate including a plurality of apertures (17) spread across the surface of the panel substrate to extend from the first face to the second face;

A nonwoven fibrous material (19) attached to the first face of the panel substrate and applied such that the apertures are covered by the nonwoven fibrous material;

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The non-woven fibrous material is positioned such that nearly complete exposure of the material occurs when installed, permitting viewing from the environmental area of the structure.

With respect to claim 26 Baruch further discloses wherein the nonwoven fibrous material is attached to the first face of the panel substrate with an adhesive (column 4 lines 30-35).

With respect to claim 31 Baruch further discloses wherein the panel includes at least two side edges each having a flange for connection to a suspended ceiling grid, wherein the suspended ceiling grid includes a plurality of grid members interconnected to form panel openings, the grid members suspended from the structure with hangers (see figure 5, Column 4 lines 45-65).

With respect to claim 34 Baruch further discloses wherein the apertures are selected from the group consisting of circular, square, triangular, rectangular, and oval.

With respect to claims 35-38 Baruch further discloses wherein the panel substrate is self-supporting (shown in figures).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 5-6, 11-13, 19-21, 29-30, 33, 39-42 and 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baruch.

With respect to claims 5, 12, 20, and 29 Baruch discloses the invention as claimed except wherein the airflow resistance through the panel is about 900 mks rays to about 1050 mks rays. It would have been obvious to one of ordinary skill in the art at the time the invention was made to select such a resistance, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

With respect to claims 6, 13, 21 and 30 Baruch discloses the invention as claimed except wherein the airflow resistance through the non-woven fibrous material is about 100 mks rays to about 600 mks rays. It would have been obvious to one of ordinary skill in the art at the time the invention was made to select such a resistance, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

With respect to claims 11, and 19 Baruch discloses the invention as claimed except wherein the apertures have sizes ranging from about 0.039 inches to about 0.117 inches. It would have been obvious to one of ordinary skill in the art at the time the invention was made to select such a size of aperture, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.



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With respect to claim 33 Baurch discloses wherein the second face includes a layer of porous insulation material (see Column 4 lines 25-35). While the non-woven layer is not explicitly stated to be an "insulation material" given the materials that are described for the layer it would an insulation material.

With respect to claims 39-42 Baruch discloses the invention as claimed except wherein the panel substrate is selected from the group consisting of metal and polycarbonate. Baruch does disclose the susbstrate as being a plastic and lists types of plastic and "other plastics" (Column 2 lines 55-65) it would have been obvious to one of ordinary skill in the art to select a material such as polycarbonate, a plastic, for the material of the substrate of Baruch. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

With respect to claims 47-50 Baruch discloses the invention as claimed except wherein the non-woven fibrous material comprises a polymer selected form the group consisting of polyester, nylon6, and polyethelyne. Baruch does disclose the non-woven to be selected from the group which includes polymers (rayon for example as shown in Column 5 lines 15-20) it would have been obvious to one of ordinary skill in the art to select a material from the above group as it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

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Claims 3,8,15-16, 23-24, 27, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baruch in view of Cortonesi et al (US5942736).

With respect to claims 3,8,15-16, 23-24, 27, and 32 Baruch discloses the invention as claimed except having second and third size groups of apertures, and their specific sizes.

Cortonesi discloses three size groups (see figure 1) of apertures on a noise barrier.

At the time of the invention it would have been obvious to one of ordinary skill in the art to combine the teachings of Cortonesi to have three size groups for the apertures for the substrate of Baruch to provide "absorption at various frequencies of the incoming sound" (column 1, beginning at line 60).

While not explicitly stated in the references Examiner considers the selection of size to have been obvious to one of ordinary skill in the art as noted above.

Claims 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baruch in view of Brown et al (US4487794).

With respect to claims 43-46 Baruch discloses the invention as claimed except wherein the substrate is metal.

Brown discloses the use of a perforate metal substrate (12 in figure 1) in which the sound incident side of the panel is covered by a fibrous material.

At the time of the invention it would have been obvious to one of ordinary skill in the art to combine the teaching of Brown to use a metal substrate and a fibrous material with the structure as taught by Baruch, namely that of a perforate substrate with a nonwoven material adhered thereto.

The motivation for doing so would have been that in the instance of transmission of light not being a consideration or if the desire is to transmit light only through perforations, a sound deadening panel of metal nature would be of higher thermal resistance than many plastic materials.

Furthermore it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

### ***Conclusion***

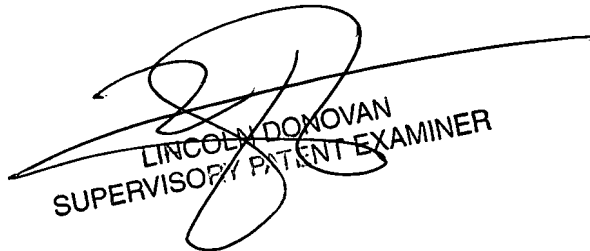
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Forrest M. Phillips whose telephone number is 5712729020. The examiner can normally be reached on Monday through Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 5712721988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FP

  
LINCOLN DONOVAN  
SUPERVISORY PATENT EXAMINER